



**U.S. Citizenship  
and Immigration  
Services**

**Non-Precedent Decision of the  
Administrative Appeals Office**

MATTER OF A-W-S-, INC.

DATE: JUNE 26, 2018

APPEAL OF TEXAS SERVICE CENTER DECISION

PETITION: FORM I-140, IMMIGRANT PETITION FOR ALIEN WORKER

The Petitioner, a private school, seeks to employ the Beneficiary as a high school math teacher. It requests classification of the Beneficiary as a member of the professions holding an advanced degree under the second preference immigrant category. Immigration and Nationality Act (the Act) section 203(b)(2), 8 U.S.C. § 1153(b)(2). This employment-based “EB-2” immigrant classification allows a U.S. employer to sponsor a professional with an advanced degree for lawful permanent resident status.

The Director of the Texas Service Center denied the petition on the ground that the Petitioner did not establish that the Beneficiary has the requisite experience to qualify for the offered position under the terms of the labor certification.

On appeal the Petitioner submits a brief and supporting documentation. The Petitioner asserts that the Beneficiary has the experience required by the labor certification and meets all of the other requirements for the requested classification of advanced degree professional.

Upon *de novo* review, we will dismiss the appeal.

**I. LAW**

Employment-based immigration generally follows a three-step process. First, an employer obtains an approved labor certification from the U.S. Department of Labor (DOL). *See* section 212(a)(5)(A)(i) of the Act, 8 U.S.C. § 1182(a)(5)(A)(i). By approving the labor certification, the DOL certifies that there are insufficient U.S. workers who are able, willing, qualified, and available for the offered position and that employing a foreign national in the position will not adversely affect the wages and working conditions of U.S. workers similarly employed. *See* section 212(a)(5)(A)(i)(I)-(II) of the Act. Second, the employer files an immigrant visa petition with U.S. Citizenship and Immigration Services (USCIS). *See* section 204 of the Act, 8 U.S.C. § 1154. Third, if USCIS approves the petition, the foreign national may apply for an immigrant visa abroad or, if eligible, adjustment of status in the United States. *See* section 245 of the Act, 8 U.S.C. § 1255.

A petition for advanced degree professional classification must be accompanied by documentation showing that the beneficiary meets all of the education, training, experience, and other requirements

of the labor certification as of the petition's priority date.<sup>1</sup> See *Matter of Wing's Tea House*, 16 I&N Dec. 158, 159 (Acting Reg'l Comm'r 1977).

## II. ANALYSIS

At issue on appeal is whether the Beneficiary meets the experience requirement of the labor certification, which states the following in section H with respect to the minimum requirements for the job opportunity:

- |      |  |                          |
|------|--|--------------------------|
| 3.   | Job title:   | High School Math Teacher |
| 6.   | Is experience in the job offered required for the job? | Yes                      |
| 6-A. | How long?  | 24 months                |
| 10.  | Is experience in an alternate occupation acceptable?   | No                       |

Box H.11 of the labor certification describes the job duties of the teaching position as follows:

Teaching all levels of math in grades 9 through 12. Prepare math curriculum includes main lesson blocks and skills classes, which shall integrate algebra, geometry, logic, combinatorics, trigonometry, and other traditional high school math topics. To provide seniors study [sic] either calculus or projective geometry and business math.

Section K of the labor certification states that the Beneficiary has been employed by the Petitioner as a high school math teacher since July 1, 2016, and that the only other experience the Beneficiary had was as a teaching assistant at the University of [redacted] from [redacted] 2012 through [redacted] 2016. The record includes a letter from the University of [redacted] confirming the Beneficiary's employment as a "teacher assistant" during that time frame. As described in that letter, the Beneficiary's job duties included:

Tutoring students in the Mathematics laboratory, conducting recitations for calculus classes and grad[ing] various courses.

The Director denied the petition on the ground that the Beneficiary's experience as a post-secondary teaching assistant did not meet the labor certification requirement of two years in the job offered, which meant experience as a high school math teacher. The Director found that even if the Beneficiary had the skillset to teach mathematics to minors, he did not have any experience of doing so before going to work for the Petitioner as a high school math teacher, which was less than two years before the priority date and was not qualifying experience in any event since the labor certification states at J.21 that the Beneficiary did not gain any qualifying experience working for the employer (the Petitioner) in a substantially similar position to the job opportunity in this petition.<sup>2</sup>

<sup>1</sup> The "priority date" of a petition is the date the underlying labor certification is filed with the DOL. See 8 C.F.R. § 204.5(d). In this case the priority date is [redacted] 2017.

<sup>2</sup> According to DOL regulations, a petitioner generally cannot rely on a beneficiary's prior experience with it, if that

On appeal, the Petitioner asserts that it has never made experience as a high school math teacher specifically a requirement of the job offered. According to the Petitioner, the labor certification requires 24 months of experience in teaching math, but not necessarily at the high school level, to qualify for the job. We do not agree, as the terms of the labor certification refute the Petitioner's claim.

In determining whether a beneficiary is eligible for a preference immigrant visa, USCIS may not ignore a term of the labor certification, nor impose additional requirements. See *Madany v. Smith*, 696 F.2d 1008, 1015 (D.C. Cir. 1983). USCIS must examine "the language of the labor certification job requirements" in order to determine what the job requires. *Id.* The only rational manner by which USCIS can be expected to interpret the meaning of terms used to describe the requirements of a job in a labor certification is to examine the certified job offer *exactly* as it is completed by the prospective employer. See *Rosedale Linden Park Company v. Smith*, 595 F. Supp. 829, 833 (D.D.C. 1984) (emphasis added). Our interpretation of the job's requirements, as stated on the labor certification, must involve reading and applying the *plain language* of the alien employment certification application form. *Id.* at 834.

In this case, the labor certification states at H.3, H.6, H.6-A, and H.10 that the job of high school math teacher requires 24 months of experience in the job offered, and that experience in an alternate occupation is not acceptable. The "job offered" in the labor certification is a high school math teacher. Contrary to the Petitioner's claim on appeal, therefore, the plain language of the labor certification requires 24 months of experience specifically as a high school math teacher. A university-level teaching assistant is not the same job as a high school math teacher, as the job duties described in the labor certification and the letter from the University of [REDACTED] make clear. Experience in a job offered means experience performing the primary duties of that job. See *Matter of Symbioun Technologies, Inc.*, 2010-PER-01422, 2011 WL 5126284\*2 (BALCA Oct. 24, 2011) (citations omitted).<sup>3</sup> In this case, the primary duties of the high school math teacher position involve teaching all levels of math in grades 9 through 12, preparing the curriculum for the various math disciplines such as algebra, geometry, and trigonometry, and, specifically for seniors, courses in other disciplines such as calculus and business math. In comparison, the duties of the Beneficiary's university-level teaching assistant position involved tutoring in the mathematics laboratory, "conducting recitations for calculus classes," and grading. These duties do not appear to involve any of the curriculum and classroom teaching duties for grade 9 through 12 which are the primary focus of the high school math teacher position. Thus, the Beneficiary's experience as a university-level teaching assistant does not qualify as experience in the job offered. Accordingly, the Beneficiary's experience as a teaching assistant at the University of [REDACTED] does not qualify as experience in the job offered.

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experience was gained in a position that is substantially comparable to the offered position. 20 C.F.R. § 656.17

<sup>3</sup> While we are not bound by BALCA decisions, we may nevertheless take note of the reasoning in such decisions when considering issues that arise in the employment-based immigrant visa process.

The Petitioner points out that its application for prevailing wage determination (ETA Form 9141), filed with the DOL prior to its labor certification application, described the experience required for the job of high school math teacher as 24 months of “teaching math experience” without reference to any specific educational level. The Petitioner also points out that in recruiting for the high school math teacher its job postings required two years of teaching experience without reference to any specific educational level. The Petitioner asserts that an individual with experience teaching math at a post-secondary school is fully qualified to teach math at a secondary school, and submits summary reports from O\*NET OnLine for secondary school teachers, post-secondary mathematical science teachers, and teacher assistants, which list some overlapping skills and abilities required for these positions. The Petitioner submits letters from mathematics professors at [REDACTED] Community College and the University of [REDACTED], both of whom state that the Beneficiary’s professional knowledge and teaching experience at the post-secondary level make him qualified to teach math at the high school level as well. In addition, the Petitioner submits two letters from members of its hiring committee who attest that the Beneficiary was the best qualified of all applicants for the job, as well as documentation pertaining to two of its other high school teachers showing that teaching experience at the high school level was not a prerequisite for hiring. Finally, the Petitioner submits job postings for a math teacher from two other secondary schools in Texas, neither of which required teaching experience specifically at the high school level.

We do not contest the Petitioner’s claims that the Beneficiary is qualified for its high school math teacher position and that prior teaching experience at the high school level is not necessarily required for a high school math teacher. The issue on appeal, however, is not the Beneficiary’s general qualifications to teach math. Rather, it is the specific requirements for the Petitioner’s high school math teacher position as set forth in its labor certification. As previously discussed, the Beneficiary must meet the terms of the labor certification which requires 24 months of experience in the “job offered,” which means 24 months of experience as a high school math teacher. The labor certification plainly states that experience in an alternate occupation is not acceptable. The Beneficiary’s university-level teaching assistant position is clearly an alternate occupation from the high school math teacher position offered by the Petitioner and therefore may not be considered qualifying experience.

Based on the foregoing analysis, we conclude that the Beneficiary does not have the experience required by the labor certification. Accordingly, the petition cannot be approved.

### III. CONCLUSION

We will dismiss the appeal because the Petitioner has not established that the Beneficiary meets the minimum experience requirement of the labor certification.

**ORDER:** The appeal is dismissed.

Cite as *Matter of A-W-S-*, ID# 1545359 (AAO June 26, 2018)